

18TH JUDICIAL DISTRICT COURT FOR THE PARISH OF IBERVILLE

STATE OF LOUISIANA

DOCKET NO. 78953

DIVISION "A"

AUGUST J. LEVERT, JR., FAMILY, LLC; RONALD R. LEVERT; PAUL M. LEVERT;
MARK W. LEVERT, JR.; JOHN E. SANFORD; JAMES L. SANFORD; and CAMPO E.
MATENS

VERSUS

BP AMERICA PRODUCTION COMPANY

FILED: _____

DEPUTY CLERK OF COURT

**BP AMERICA PRODUCTION COMPANY'S *EX PARTE* MOTION
AND INCORPORATED MEMORANDUM IN SUPPORT FOR
MANDATORY REFERRAL TO THE LOUISIANA DEPARTMENT
OF NATURAL RESOURCES FOR THE DEVELOPMENT OF
THE MOST FEASIBLE PLAN PURSUANT TO La. R.S. 30:29**

MAY IT PLEASE THE COURT:

Pursuant to the provisions of Louisiana Code of Civ. Proc. Art. 1563 and La. R.S. 30:29 ("Act 312"), BP America Production Company ("BP") has made a limited admission for environmental damage on the Subject Property and that it is a "responsible party" as to specific portions of the Subject Property.¹ Therefore, BP moves this Court to refer this matter to the Louisiana Department of Natural Resources ("LDNR") for the development of the most feasible plan mandated by Act 312.

I. INTRODUCTION

Plaintiffs August J. Levert, Jr., Family, LLC, Ronald R. Levert, Paul M. Levert, Mark W. Levert, Jr., John E. Sanford, James L. Sanford, and Campo E. Matens (collectively, "Plaintiffs"), filed suit on May 28, 2019 alleging that BP is responsible for environmental damage to the Subject Property. Plaintiffs seek damages for remediation of the environmental damage allegedly caused by BP's predecessors, Midwest Oil Corporation and Amoco Production Company. Plaintiffs admit that this suit is governed by Act 312.

¹ The "Subject Property" is more particularly described in the Petition for Damages as, "[t]hat certain tract of land situated in the Parish of Iberville, State of Louisiana, and being the North Half (N/2) of Fractional Section 15, Township Ten South (T10S), Range 11 East (T11E), containing 57.155 acres; and listed as part of Parcel Number 0800988025 in the Tax Roll Records in the Assessor's Office in Iberville Parish, Louisiana."

Contemporaneous with the filing of this motion, BP has filed its Limited Admission for Environmental Damage Pursuant to La. R.S. 30:29 (“Limited Admission”). In the Limited Admission, BP identifies the specific portions of the Subject Property upon which there is “actual or potential impact” as defined under Act 312. The scope and areas of “environmental damage” on the Subject Property are more particularly described as follows:

- A. Limited Admission Area 1: There exists evidence of actual or potential impact to the Discontinuous Shallow Water Bearing Zone² in Limited Admission Area 1 depicted on Exhibit A. Limited Admission Area 1 is associated with a now closed pit formerly located on the Iberville Parish School Board Property. BP’s limited admission within Limited Admission Area 1 is for environmental damage, if any, to groundwater.
- B. Limited Admission Area 2: There exists evidence of actual or potential impact to the soil and to the Discontinuous Shallow Water Bearing Zone in Limited Admission Area 2 depicted on Exhibit A. Limited Admission Area 2 is associated with the Schwing-Levert No. 1 (SN 120453) and the Schwing-Levert No. 1-D (SN 121454). BP’s limited admission within Limited Admission Area 2 is for environmental damage, if any, to soil and groundwater.
- C. Limited Admission Area 3: There exists evidence of actual or potential impact to the soil and to the Discontinuous Shallow Water Bearing Zone in Limited Admission Area 3 depicted on Exhibit A. Limited Admission Area 3 is associated with the Schwing-Levert No. 2 (SN 123040).³ BP’s limited admission within Limited Admission Area 3 is for environmental damage, if any, to soil and groundwater.

BP further admits, pursuant to Act 312, that it is a “responsible party” for environmental damage in Limited Admission Areas 1, 2, and 3. BP has elected to limit its admission to responsibility for implementing the Most Feasible Plan to evaluate or remediate all or a portion of environmental damage, if any, in Limited Admission Areas 1, 2, and 3 to applicable regulatory standards that protect the health, safety, and welfare of the public.

² “Discontinuous Shallow Water Bearing Zone” means the Class 3 groundwater present intermittently occurring between approximately eleven to sixteen feet beneath the ground surface.

³ Limited Admission Areas 1, 2, and 3 depicted on Exhibit A and which are more particularly described in Paragraphs A to C herein are hereinafter collectively referred to as “Limited Admission Areas 1, 2, and 3.”

II. RELEVANT LAW

The Louisiana Legislature enacted Act 312 “to ensure that damage to the environment is remediated to a standard that protects the public interest” and “set forth the procedure for judicial resolution of claims for environmental damage to property arising from activities subject to the jurisdiction of the Department of Natural Resources, office of conservation.” La. R.S. 30:29(A) (2014).

In 2012, the Legislature revised Act 312 and enacted Louisiana Code of Civil Procedure article 1563 to allow parties to make a “limited admission.” Through a “limited admission,” a party may admit responsibility for “environmental damage.” La. Code Civ. Proc. Art. 1563(A). Environmental damage is broadly defined by Act 312 as “any actual *or potential impact*, damage, or injury to environmental media caused by contamination resulting from activities associated with oilfield sites.” Once a limited admission is filed, the Court *must* refer the matter to the Louisiana Department of Natural Resources (“LDNR”) to conduct a public hearing for development of the “most feasible plan” to remediate the damage on the property in accordance with applicable regulatory standards. La. Code Civ. Proc. Art. 1563(2). The limited admission, the plan approved by the LDNR, and all written comments by the agencies *shall be admissible as evidence* in any action. *Id.* Finally, Act 312 creates a *rebuttable presumption* that the feasible plan approved by LDNR shall be the most feasible plan to evaluate or remediate the environmental damage under the applicable regulatory standards. For cases tried by a jury, the court shall instruct the jury regarding this presumption if requested by a party. *Id.*

III. BP’S ADMISSION

Pursuant to Act 312 and Louisiana Code of Civil Procedure article 1563, BP has made a limited admission that “actual or potential impacts,” as defined by Act 312, exist on portions of the Subject Property in Limited Admission Areas 1, 2, and 3. Further, BP has admitted that it is a “responsible party” for environmental damage, if any, in Limited Admission Areas, 1, 2, and 3 under Act 312. As required by Act 312, BP moves this Court to refer this matter to LDNR for the development of the “Most Feasible Plan.”

Respectfully submitted:



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has this day been forwarded to all known counsel of record by e-mail properly addressed.

Lafayette, Louisiana, this 26th day of October 2022.

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FILED
IBERVILLE, LOUISIANA

